



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PAUL R. LEPAGE
GOVERNOR

JAMES P. BROOKS
ACTING COMMISSIONER

MEMORANDUM

TO: The Board of Environmental Protection

FROM: Colin A. Clark, Bureau of Land & Water Quality, Augusta

RE: Consent Agreement for K&K Excavation, Inc.

DATE: February 3, 2011

Statute and Rule Reference:

The Natural Resources Protection Act, 38 M.R.S. § 480-C, prohibits the alteration of more than 4300 square feet of a freshwater wetland and the disturbance of soil adjacent to a river, stream or brook without first obtaining a permit from the Department.

The Site Location of Development Act (Site Law), 38 M.R.S.A. § 483-A, states, in pertinent part, that a person may not construct or cause to be constructed any development of state or regional significance that may substantially affect the environment without first having obtained approval for this construction

The Storm Water Management Law, 38 M.R.S. § 420-D, states, in pertinent part, that a person may not construct, or cause to be constructed, a project that includes greater than one acre or more of impervious area without prior approval from the Department.

Location: Auburn, Maine

Description:

On April 2, 2007, an inspection of the property located on Hotel Road in Auburn by Department staff revealed that K & K Excavation, Inc. had stripped and graded approximately 5.4 acres; approximately 1,000 square feet of this activity occurred within 75 feet of the unnamed streams on the property. In addition, approximately 18,360 square feet of forested freshwater wetland was altered by filling and removing vegetation on the site. Paul Castonguay, Get ER Done, LLC, Mark Your Spot, LLC, Nobility, LLC, or K & K Excavation, Inc. did not first obtain a permit from the Department for these activities. At the time of inspection, insufficient erosion controls were installed at the site and staff observed erosion of soil material beyond the project boundary.

Environmental Issues: Water quality in an aquatic system can be affected by large disturbed, non-vegetated areas without properly engineered stormwater controls in place. These sites may discharge soil material into a protected natural resource and have a potentially detrimental effect on the aquatic life of that system. When present in the water, suspended soil materials may physically damage the gills of fish and other aquatic species interfering with breathing, feeding, and other life-supporting functions. The sedimentation caused by introduced soil destroys bottom habitat critical for some fish species and the invertebrates on which they feed. Riparian buffers protect water courses from the impacts of thermal pollution, provide wildlife corridors and nesting habitat for songbirds, and provide nutrient sinks for phosphorus and other pollutants which can degrade the water quality of these aquatic systems. Freshwater wetlands generally absorb and purify storm water runoff, as well as providing unique wildlife habitat. Removing vegetation and disturbing soil in adjacent to a wetland exposes soil such that it is in position to wash into the resource. Although this violation did not result in a substantial impact, the cumulative effect of frequent minor alterations of freshwater wetlands poses a substantial threat to the environment and economy of the State.

Department Recommendation: The Department recommends acceptance of this Consent Agreement stipulating that K&K Excavation, Inc. pay a monetary penalty of \$10,400.00 which has been paid. Restoration to the stream buffers has been completed in accordance with the plan submitted and all required after-the-fact permits have been acquired. The penalty is based on the Department's penalty policy reflecting the size of the violation, knowledge of the violator, and that the violation could have been avoided.



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI

GOVERNOR

DAVID P. LITTELL

COMMISSIONER

IN THE MATTER OF:

K & K EXCAVATION, INC.)	ADMINISTRATIVE CONSENT
AUBURN, ANDROSCOGGIN, MAINE)	AGREEMENT
NRPA, SITE, STORMWATER)	(38 M.R.S.A. § 347-A)
2007-059-L)	

This Agreement, by and among K & K Excavation, Inc., the Maine Department of Environmental Protection ("Department"), and the Maine Office of the Attorney General is entered into pursuant to the laws concerning the Department's *Organization and Powers*, 38 M.R.S.A. § 347-A(1).

The parties agree as follows:

1. Mark Your Spot, LLC and Nobility, LLC, P.O. Box 9340, Auburn, Maine 04210, own a parcel of land on Hotel Road in Auburn, Maine as described and recorded in Book 7005 on Pages 92 of the Androscoggin County Registry of Deeds.
2. During the time period in which the activities described herein occurred, Get ER Done, LLC, Mark Your Spot, LLC and Nobility, LLC, P.O. Box 9340, Auburn, Maine 04210, owned a parcel of land on Hotel Road in Auburn, Maine as described and recorded in Book 7594 on Pages 98 of the Androscoggin County Registry of Deeds.
3. Paul Castonguay, 6 Sherbrooke Avenue, Lewiston, Maine 04240, owns a parcel of land on Hotel Road in Auburn, Maine as described and recorded in Book 7021 on Page 81 of the Androscoggin County Registry of Deeds.
4. K & K Excavation, Inc., a Maine corporation with a mailing address of 302B Auburn Road, Turner, Maine 04282, is authorized to conduct business in Maine and is in the excavation and construction business. K & K Excavation, Inc. performed work on the properties referred to in Paragraphs 1, 2, and 3 of this Agreement. Clay McLafferty is the Vice President of K & K Excavation, Inc.
5. The properties described in Paragraphs 1, 2, and 3 of this Agreement contain portions of two unnamed streams which are rivers, streams or brooks as defined by the *Natural Resources Protection Act*, 38 M.R.S.A. § 480-B(9).
6. On April 2, 2007, an inspection of the properties described in Paragraphs 1, 2, and 3 of this Agreement by Department staff revealed that K & K Excavation, Inc. had stripped and graded approximately 5.4 acres; approximately 1,000 square feet of this activity occurred within 75 feet of the unnamed streams on the property. In addition, approximately 18,360 square feet of forested freshwater wetland was altered by filling and removing vegetation on

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106 HOGAN ROAD
BANGOR, MAINE 04401
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PORTLAND
312 CANCO ROAD
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PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769-2094
(207) 764-0477 FAX: (207) 760-3143

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2007-059-L)	

the sites. Paul Castonguay, Get ER Done, LLC, Mark Your Spot, LLC, Nobility, LLC, or K & K Excavation, Inc. did not first obtain a permit from the Department for these activities. At the time of inspection, insufficient erosion controls were installed at the site and staff observed erosion of soil material beyond the project boundary.

7. The activities described in Paragraph 6 of this Agreement constitute the following violations:

A. By displacing soil, filling, and removing vegetation in a freshwater wetland without first obtaining a permit from the Department, K & K Excavation, Inc. violated the *Natural Resources Protection Act*, 38 M.R.S.A. § 480-C.

B. By displacing soil adjacent to a river, stream or brook without first obtaining a permit from the Department, K & K Excavation, Inc. violated the *Natural Resources Protection Act*, 38 M.R.S.A. § 480-C.

C. By constructing a development of state or regional significance that may substantially affect the environment, namely a structure, without first obtaining a permit from the Department, K & K Excavation, Inc. violated the *Site Location of Development* law, 38 M.R.S.A. § 483-A.

D. By starting construction of a project that includes one or more acres of disturbed area without first obtaining a permit from the Department, K & K Excavation, Inc. violated the *Stormwater Management* law, 38 M.R.S.A. § 420-D.

8. On April 12, 2007, the Department issued a Notice of Violation to K & K Excavation, Inc. regarding the violations described in Paragraphs 6 and 7 of this Agreement in accordance with 38 M.R.S.A. § 347-A(1)(B).

9. On January 31, 2008, Mark Your Spot, LLC and Nobility, LLC submitted an after-the-fact permit application for the construction of a stormwater management system for a 3 acre trailer storage area on the properties described in Paragraphs 1 and 2 of this Agreement. The after-the-fact application has been assigned #L-24133-NJ-A-N and was approved by the Department on May 19, 2008.

10. On January 31, 2008, Mark Your Spot, LLC and Nobility, LLC submitted an after-the-fact permit application for the 14,150 square feet of wetland fill for the construction of a trailer storage area on the properties described in Paragraphs 1 and 2 of this Agreement. The after-the-fact application has been assigned #L-24133-TC-B-N and was approved by the Department on May 19, 2008. All unapproved areas of wetland impact where vegetation had been removed were to be allowed to naturally revegetate.

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11. On February 1, 2008, Mark Your Spot, LLC submitted an after-the-fact *Site Location of Development* permit application to the City of Auburn pursuant to 38 M.R.S.A. § 489-A(8). The after-the-fact permit was approved on March 12, 2008.
12. On February 14, 2008, Paul Castonguay submitted an after-the-fact Stormwater permit by rule notification for the construction of a building pad, associated parking and access drive on the property described in Paragraph 3 of this Agreement. The after-the-fact application has been assigned PBR # 45136 and was approved by the Department on February 21, 2008.
13. On February 25, 2008, Paul Castonguay submitted an after-the-fact permit by rule notification for the construction of a building pad, associated parking and access drive within seventy five feet of the unnamed stream referred to in Paragraph 5 of this Agreement. The after-the-fact application has been assigned PBR # 45222 and was approved by the Department on February 26, 2008.
14. On May 6, 2009, Department staff inspected the properties described in Paragraph 1, 2 and 3 of this Agreement and determined that vegetation in the stream buffer that had been displaced and wetland alterations of the site that and were not approved for alteration had begun to naturally reestablish itself.
15. The Department has regulatory authority over the activities described herein.
16. Pursuant to 38 M.R.S.A. §§ 341-D(6)(C) and 347-A(1)(A)(1), administrative consent agreements must be approved by the Board of Environmental Protection (the "Board") which is part of the Department.
17. This Agreement shall become effective only if it is approved by the Board and the Office of the Attorney General.
18. To resolve the violations referred to in Paragraphs 6 and 7 of this Agreement, K & K Excavation, Inc. agrees to pay the Treasurer, State of Maine, in accordance with the following, the sum of ten thousand four hundred dollars (\$10,400.00) as a civil monetary penalty:
 - A. Upon signing the Agreement pay the sum of two thousand six hundred dollars (\$2,600.00).
 - B. No later than September 1, 2010 pay the sum of two thousand six hundred dollars (\$2,600.00).
 - C. No later than October 1, 2010 pay the sum of two thousand six hundred dollars (\$2,600.00).

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D. No later than November 1, 2010 pay the sum of two thousand six hundred dollars (\$2,600.00).

19. The Department and the Office of the Attorney General grant a release of their causes of action against K & K Excavation, Inc. for the specific violations listed in Paragraphs 6 and 7 of this Agreement on the express condition that all actions listed in Paragraph 18 of this Agreement are completed in accordance with the express terms and conditions of this Agreement. The release shall not become effective until this condition is satisfied.

IN WITNESS WHEREOF the parties hereto have executed this Agreement consisting of four (4) pages.

K & K EXCAVATION, INC.

BY: Clay McLafferty DATE: 7-27-2010
CLAY MCCLAFFERTY, VICE PRESIDENT

BOARD OF ENVIRONMENTAL PROTECTION

BY: _____ DATE: _____
SUSAN M. LESSARD, CHAIR

MAINE OFFICE OF THE ATTORNEY GENERAL

BY: _____ DATE: _____
MARGARET A. BENSINGER, ASSISTANT ATTORNEY GENERAL